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OFFICE OF PETITIONS

In re Application of
Steven R. Evanovich et al.
Application No. 60/587,124
Filed: July 12, 2004
Attorney Docket No. Schroeder-0404

ON PETITION

This is a decision on the petition under 37 CFR 1.10 (c) filed August 27, 2004 to correct the filing date to July 12, 2004, rather than the presently accorded filing date of July 13, 2004.

Petitioner alleges that the application was deposited in Express Mail service on July 12, 2004. In support, petitioner supplied a copy of Express Mail Label No. ED065119605US (the same Express Mail number found on the transmittal sheet accompanying the original application papers located in the official file). The "date-in" on the Express Mail Label is July 12, 2004.

In view of the above, the petition is **GRANTED** and no petition fee is due.

This matter is being referred to the Office of Initial Patent Examination for correction of the **filing date to July 12, 2004** and for issuance of a corrected filing receipt.

Telephone inquiries related to this matter should be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

Office Action Summary	Application No.	Applicant(s)	
	10/628,599	ROBINSON ET AL.	
	Examiner	Art Unit	
	Robin A. Hylton	3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 August 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-48 and 53* is/are pending in the application.

4a) Of the above claim(s) *21-48 and 53* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *10-24-03*
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of the election of species requirement in the reply filed on August 19, 2005 is acknowledged. The traversal is on the ground(s) that there are not two distinct inventions claimed. This is not found persuasive because the election of species was set forth in response to the presence of two distinctly claimed species, not two distinct inventions.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 21-48 and 53 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on August 19, 2005.

Claim Rejections - 35 USC § 112

3. Claims 7,8, 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7 recites the limitation "said slip layer " in line 1. There is insufficient antecedent basis for this limitation in the claim. It is unclear which of the slip layers is being referenced since a slip layer could be affixed to the reseal layer in claim 1 and in claim 6.

It is unclear if the reseal layer is intended to have two slip layers (as in claim 8) or possibly three slip layers (as in claim 12).

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-3,9,and 13 are rejected under 35 U.S.C. 102(e) as being anticipated by O'Brien et al. (US 6,902,075).

Layer **11** is a slip layer wherein it allows the reseal to become separated from the inner seal.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 4-8,10,11,14-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Brien.

O'Brien teaches the claimed closure except for the specific materials of the reseal layer or closure as set forth in the instant claims or slip layer being on both upper and lower surface of the reseal layer.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the slip layer of polymeric material or having a lubricant and the seal layer of rubber and synthetic rubber, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form a slip layer on the upper and lower surfaces of the reseal layer, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art.

It is noted the claims are directed to only a closure, therefor the seal of claim 20 would extend beyond the surface of an associated container neck finish.

Regarding claim 15, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a stepped portion depending from the top wall of the closure since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art.

Regarding claim 19, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a shoulder on the container since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art. Doing so allows only a small surface area of the container to contact the seal.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art closures teaching features similar to those disclosed and/or claimed are cited for their disclosures.

9. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify

the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

10. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number 571-273-8300 on the date shown below:

Typed or printed name of person signing this certificate

_____

Signature_____

Date_____

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse, can be reached on (571) 272-4544.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RAH
October 31, 2005

Robin A. Hylton
Primary Examiner
GAU 3727